

July 2, 2010

Delta Stewardship Council
650 Capitol Mall, 5th Floor
Sacramento, CA 95814

RE: Comments and suggested edits to the first Draft Interim Plan

Dear Chairman Isenberg and Council Members:

SFCWA* appreciates the opportunity to provide comments on the Delta Stewardship Council's (Council) first Draft Interim Plan (IP).

We appreciate the level of effort required and the short timelines involved in your work. Consequently, we are concerned that this proposed IP is "biting off more than it can [or should] chew." Rather than being a nominal draft of the Delta Plan itself, the IP should focus on the Sacramento-San Joaquin Delta Reform Act's (Act - 2009) explicit direction: "The council shall develop an interim plan that includes recommendations for early actions, projects, and programs." [§85084, emphasis added.] The current draft is much broader than contemplated by the Act. The need to move quickly on "early actions, projects and programs" is being compromised by an effort to cover all likely aspects of the Delta Plan. Particularly in the near-term, the Council and its IP should concentrate on how to provide immediate "value-added" within the current milieu of Delta activities.

We recommend that you revise the focus of the IP effort and direct your consultants to focus on satisfying §85084's legislative direction by developing and prioritizing lists of actions, projects and programs that can be initiated immediately, along with related recommendations to pertinent state and federal agencies to assess, and where appropriate revise, their regulatory and other activities to facilitate these "early" recommendations.

Overarching Comments regarding the first Draft Interim Plan

We begin by reiterating the general comment made by Greg Zlotnick at your meeting on June 25th. There are many instances within the draft IP where it is unclear as to the relationship of the Council to legislatively mandated work products that were legislatively delegated to other agencies to provide to the Council for incorporation into or to "inform" the Delta Plan. We recommend that the Council identify each aspect of your plan development effort dependent upon input from other agencies and provide a description of each; outlining the relationship of the Council to the development of those products, including its consulting role (if any), and its review authority (if any).

* SFCWA is a Joint Powers Authority of water contractors that receive water from the State Water Project and the Central Valley Project. Together, SFCWA members serve over 25 million Californians and provide water to irrigate more than 3 million acres of the nation's most productive agricultural lands. SFCWA's mission is to assist its member agencies in assuring a sufficient, reliable and high quality water supply for their customers and maximize the efficient operation and integration of the State Water Project and federal Central Valley Project.

In addition, we maintain a general concern that the draft IP too often blurs the lines between the Council's legislatively authorized role and asserting authority to weigh in on water project operational issues and related activities that are solely within the scope of the Bay Delta Conservation Plan (BDCP), as well as flow criteria and requirements that are under the purview of the State Water Resources Control Board (SWRCB). While the Council of course has the responsibility to assess the outcome of the BDCP and the concomitant regulatory requirements developed by the SWRCB against the co-equal goals, it does not have the authority or institutional capacity to insert or substitute itself into these very complex, legally intricate and already transparent public processes. The Council, as it has already begun to do, should receive regular informational briefings regarding the progress of these efforts so that it may provide comment and advice. It should not become yet another forum where contested issues are reargued and debated.

The Council has been designated as a "responsible agency" for the purposes of the Delta Habitat Conservation and Conveyance Program (DHCCP) EIR/EIS. The DHCCP is assessing various alternatives to achieve the co-equal goals of water supply reliability for the State Water Project (SWP) and federal Central Valley Project (CVP) contractors and ecosystem restoration in the Delta. As stated in the May 20, 2010, memo from the Office of the Attorney General to the Council, which was included in the May 27-28, 2010, Council meeting packet, "the Council is a unique statutorily-designated "responsible agency" that does not necessarily have the kind of direct "approval authority" over the project in question (i.e., the BDCP itself) that is typically the case for the responsible agencies under CEQA". The Legislature's designation of the Council's unique role in the DHCCP process should not be expanded into assertion of a general role in all activities that will feed into it.

For example, the SWRCB will through its water rights authority establish the future operational parameters of the SWP and CVP, utilizing information from the BDCP, consistent with the Act's direction. Environmental restoration and conservation components of the BDCP will satisfy mitigation and enhancement needs relative to Project operations and endangered species act requirements. Yet, the draft IP seems to imply a more intrusive role for the Council, with use of words such as "develop" and "establish" in the context of policy issues that are not for the Council to resolve but rather are for the Council to provide a clearinghouse for information related to them and an independent review as to whether the developed policies are consistent with the co-equal goals and the Delta Plan.

Attached are specific editorial comments. Again, thank you for the opportunity to provide our comments, suggested edits and policy perspectives. We look forward to continuing to work with the Council and your staff as this process progresses.

Sincerely,

A handwritten signature in black ink, appearing to read "Byron M. Buck", with a stylized, flowing script.

Byron M. Buck
Executive Director

SFWCA SPECIFIC EDITORIAL COMMENTS

Page 2, bottom: the draft states that the proposed Appendix 1 of “Council-approved Actions” will include “actions regarding the [BDCP]” and cites code section 85320(e). It is unclear why there would be any mention of any Council action related to the BDCP in the IP. §85320(e) states that if the Department of Fish and Game (DFG) certifies the BDCP as a Natural Communities Conservation Plan (NCCP) and as meeting the CEQA requirements delineated in the Act, as well as being a federally designated Habitat Conservation Plan (HCP), then the Council “shall” incorporate the BDCP into the Delta Plan. The code section also states the DFG certification can be appealed to the Council. Because the potential DFG certification will not occur until late 2011 at the earliest, there is no reason to mention this in the IP, which has a nearer-term timeframe. Moreover, other than the Council’s acceptance of a potential appeal and its rejection of same or, after a hearing, remand with detailed comments and recommendations for reconsideration of the BDCP certification by DFG, it is unclear what, if any, other actions related to the would be BDCP contemplated to be included in this proposed appendix. We believe there are no other “actions” that the Council would or could appropriately take in relation to the BDCP. The legislation only provides that the Council “may provide recommendations to BDCP implementing agencies” regarding BDCP implementation and states that those agencies will “consult with the council” regarding those recommendations. [§85320(g)] This part of the proposed Appendix 1 should be deleted. If it is not, then the document must provide a clear explanation of the Council “actions regarding the [BDCP]” that are contemplated for inclusion.

Page 4, bullets: The first and second accurately state the listed activities are the responsibilities of other agencies (DFG, SWRCB and DWR). Consequently, the IP should clarify, consistent with comments of Mr. Kirlin at the Council meeting on June 25th, that the Council will be monitoring and receiving information, not formulating actions, regarding these areas. Bullets 3 and 4 are appropriate to include in the IP as they are within the purview of the Council to actively engage on, though DWR is designated as the lead for coordinating flood management and water supply operations of the SWP and CVP. Bullet 5 shouldn’t be included in the IP since the Delta Protection Commission’s (DPC) economic sustainability plan isn’t due until a year from now on July 1, 2011. As a result, it should be incorporated into the DP instead. The sixth bullet describes the DPC’s development of its “delta as place” proposals as if the Council is to do it. The Council is to review the DPC’s recommendations, once completed, for consistency with the Delta Plan and achieving the co-equal goals. This sixth bullet should clarify the Council’s role in distinction to that of the DPC.

Page 7, “Section 85020(a) Manage the Delta’s water and environmental resources and the water resources of the state over the long term.”: The activities that will be addressing this policy aim are generally outside the purview of the Council and have been either specifically delegated to others (e.g., BDCP, DFG, SWRCB) in the Act or they are central to existing authorities of other agencies. The Council should not be inserting itself into these issues because (a) addressing them in detail is not its job, (b) there is no need to establish another forum for debate and argument, and (c) it doesn’t have the expertise or institutional capacity to do so effectively.

Page 7, bottom, “Background”: The Delta is not “the source” of drinking water etc. The source of the water is the Sierra Nevada and the Delta is a conveyance location for that water to the SWP and CVP pumps. The statement that there are “more than a half million residents” needs to specify that that figure reflects both the primary and secondary zones of the Delta. The use of “its flows” is inappropriate. With regard to the state’s agricultural industry, it would be the “flows through the Delta and water exports from the south Delta” that are critical. For commercial fishing, flows through the Delta are one critical factor. The use of the term “islands” is misplaced with respect to land forms in the Delta. Instead of “islands”, we suggest substituting “...and its lands, levees and waterways form important...”

Page 8, paragraph starting with “The challenges...”: Here and throughout, whenever climate change and sea level rise are mentioned, alteration to hydrology in the Delta watershed should also be mentioned. Use of “along Delta rivers” with regard to the potential for increased flooding is confusing. We suggest “potential for increased flooding along Delta tributaries and within the Delta itself.”

Page 8, 2nd bullet at the bottom: The citation to §85084.5 as authority for the proposed early action to “coordinate with and support the DFG in developing flow criteria” misstates the law. That code section discusses DFG’s obligation to consult with the United States Fish and Wildlife Service and the National Marine Fisheries Service as part of its development of recommendations regarding flow criteria and biological objectives to the SWRCB, not the Council. There is no role for, or the need for, the Council to “coordinate and support” in this area. Again, receiving information and monitoring DFG’s development of its recommendations is certainly appropriate, but “coordinate with and support” implies a more active engagement which we believe is beyond the Council’s scope of authority.

Page 9, third check mark under “Performance Measures and Targets”: “development and acceptance of flow criteria developed by DFG and SWRCB” is inappropriate. The Council does not have authority to “develop” nor “accept” these as they are the sole responsibility of DFG and the SWRCB and are to inform BDCP operational discussions as well as the SWRCB Water Quality Control Plan (WQCP) and water rights decisions that will need to follow. This should be changed to “Monitor and receive information regarding flow criteria developed by DFG and SWRCB.”

Page 9, 2nd paragraph of “Background”: In addition to “pioneer farmers” it would be historically accurate to also acknowledge the Chinese laborers that built most of the Delta’s levees.

Page 10, 4th paragraph: Is there no data more current than 1994? Also, instead of using a combined figure for goods and services production in the Delta, it would be helpful to breakout how much was generated in the primary zone versus the secondary zone. As Council member Nottoli mentioned, “billion” is missing after “\$860” and there’s an extra space in “o f” at the end of the paragraph.

Page 10, 5th paragraph: As Council member Nottoli mentioned, the first and last sentences are almost identical. Suggest deleting the last sentence.

Page 12, “Performance Measures and Targets”: It is important that the Council not expect every action to be measured against satisfying both of the co-equal goals and instead understand that it should be assessing the entire range of activities as part of a comprehensive package approach toward achieving them. We suggest that the document explicitly state that the targets are to be assessed as a package and not with absolutes related to each individual measure, i.e. “gross regional product from agriculture” might decrease and that would be acceptable because of improvements in other categories (e.g. increased habitat lands, enhanced tourism activity) or mitigation of such impacts.

Page 13, “Section 85020(h): Establish a new governance structure...”: Almost by definition, this is not an “early action” and thus shouldn’t be part of the IP. To include this in the IP would be premature as well as a huge diversion from beginning to address more immediate needs that should be the purpose and objective of the IP. This is a topic for the Delta Plan, not the IP. In addition, “new governance” was comprehensively addressed by the legislation itself through establishment of the Council, the Conservancy, and the Water Commission; as well as the revision of the DPC’s composition. Also, BDCP is incorporating a new “governance” structure to oversee its implementation and adaptive management going forward.

Page 13, bottom: Whenever referencing §85021 we urge you to quote it exactly rather than paraphrase. Here, key words are missing: “future” related to water supply, and “a statewide strategy of investing in” related to increased regional self-reliance. In this instance please insert the words provided above or more desirably, cite the actual code language.

Page 15, “framework”: Developing a “delta flow plan” and a “delta ecosystem restoration plan” are beyond the scope of the Council’s mission. The former is part of the BDCP with ultimate authority at the SWRCB. The latter is a combination of the BDCP and Delta County HCPs. Here again, the text should clarify the intent, as stated by Mr. Kirlin at the Council’s meeting on June 25th, that the Council would receive these products from the appropriate agencies for inclusion in the Delta Plan. With regard to “tool” number 6, it would be helpful for the text to clarify that the Council will not be developing or establishing performance standards but rather, as reflected in the text, a methodology for measuring general progress in the area of improving California’s water supply reliability.

Page 15, “Delta Water Flow Plan”: This is written as if the Council will be developing a “Delta Flow Plan”. Again, as Mr. Kirlin seemed to state at the Council’s meeting on June 25th, it would be helpful for the text to state explicitly that what is contemplated is the incorporation into the Delta Plan of the operational and flow requirements established via the BDCP permit conditions and the subsequent related SWRCB WQCP and water rights decision(s), which will ultimately address diversions in, upstream and from the Delta. It is also particularly important to acknowledge that the SWRCB’s flow criteria are being developed as informational only and do not reflect the required balancing of beneficial uses of water required as integral to a WQCP -- not to mention analysis relative to consistency with the co-equal goals.

Page 16, top: Ecosystem restoration activities promoted by the Council should only be proffered as and if they are complementary to and supplemental of those in the BDCP and Delta County HCPs. After “Interim Plan” on the 2nd line of the page, we suggest adding: “that complement and/or supplement the BDCP and Delta Counties’ HCPs.”

Page 16, section re: Levees: We concur with Delta Vision Strategic Plan Strategy 6.3 and urge the Council to immediately initiate the preparation of a comprehensive long-term levee investment strategy that is consistent with the level of protection provided and the uses of land enabled by those levees. Concurrent with the development of this categorization, we urge the Council to also develop criteria for the prioritization of funding to facilitate the earliest possible action on levees that are identified as its highest priorities within the investment strategy. With respect to public funding, we believe public funds should be applied to priority levee projects commensurate with public benefits provided and those levees implicating the greatest and highest priority public benefits should be carried out first.

Page 18, “Finance Plan”: On the last line of the first paragraph, the text states that various strategies from the *Delta Vision Strategic Plan* (DVSP) “must be considered in developing the Delta Plan.” This could be read to overstate what the Act requires of the Council. Though required to “consider” the strategies in the DVSP, it is not required to choose to utilize them; rather it “may include” them. [§85300] We suggest the language be revised to convey the permissive direction of the legislation rather than implying a mandatory one when it comes to the Council’s discretion related to the strategies and recommendations of the DVSP.

Appendix (App) 4, page A-12, first bullet under Section 85020(c): channelization by the levees also changed flow patterns within the Delta, so we suggest adding “and altered flow patterns resulting from the Delta’s changed geometry.”

App 4, page A-12, final paragraph of “Background”: should include changed hydrology along with sea level rise as a climate change impact.

App 4, page A-13, Section 85302(e): though extracted from the legislation, this list should be put into context by explicitly stating that these activities will be pursued in a manner that is complementary and/or supplementary to the BDCP and Delta Counties’ HCPs, without duplication or substitution.

App 4, page A-13, 3rd Bullet under SBX7 1: the language in the second line should be changed from “may” to “shall” to be consistent with the legislation.

App 4, page A-15, middle of page: discussion of Council endorsing performance measures, should say “these and/or other” rather than just “these and other” as that implies “these” are pre-determined as accepted. Also, the Council is not in position to “accept” DFG developed flow criteria per the 2nd check mark in this section. The SWRCB has the responsibility to consider them in its WQCP and water rights processes. The flow management issues are not within the purview of the Council other than to monitor and receive information regarding their development.

App 4, page A-16, top, first line: replace “from” with “conveyed through”.

App 4, page A-16, paragraphs 4, 5, and 6: It would be useful and informative to provide a similar historic rendering of the supply side of the ledger, including the constraints imposed on SWP and CVP deliveries over the last two decades and the success of demand management and conservation efforts throughout California over the same time period used to describe the changes in per capita water use. In the Bay Area and Southern California, aggregated water use is close to the same amount today as was used a generation ago. Also, we suggest using the word “demand” instead of “use” in many instances in these paragraphs, as these words define different things in the context of urban water management.

App 4, page A-17: After the bullets, we suggest adding some text explaining that the Council may seek to establish a monitoring protocol so it can track progress across California in satisfying these legislative mandates.

App 4, page A-18: despite being included as a couple of things to “consider”, the Council does not have the authority or jurisdiction to actually “establish” or “develop” either “regional self-sufficiency standards” nor “statewide and regional strategies to reduce reliance on the Delta in meeting California’s future water supply needs.” Again, consistent with Mr. Kirlin’s comments at the Council meeting on June 25th, we suggest adding language stating that the Council may seek to become an informational clearinghouse to track progress. Furthermore, the notion that these extremely controversial issues should be a focus of the IP is misplaced, unless it is to develop a monitoring role rather than one that assumes a capability to “develop” standards.

App 4, page A-22: “Section 85020(f): Improve the water conveyance system and expand statewide water storage.” While the current draft indicates the language for the section will be developed for the second draft, the conveyance issues are being addressed by the BDCP and DHCCP. Other than perhaps recommending the benefits of increased statewide storage (surface and groundwater), the Council’s role in effectuating this policy direction is limited to its “responsible agency” designation for the DHCCP EIR/EIS. It would be helpful if the Council’s perspective on this role was provided in some detail. Once more, however, this is not an area of priority for the IP, but rather something that will need to be a part of the Delta Plan.

App 4, page A-23: paragraph starting with “Section 85302(b)(2)” has transposed the code section number. All “85302”s need to be changed to “85320”s.

App 4, page A-24, Para 3, line 2: Statement that climate change “could require additional water for the ecosystem” is presumptuous, assumes a static view of the ecosystem and that water supplies would be used to maintain such a static system in the face of climate change. This is well beyond the scope of the Council’s authority or mission. It might be appropriate, in the alternative, to indicate that climate change will add further stress and uncertainty to ecosystem management in the Delta and challenge the practicability of traditional regulatory constraints.

App 4, page A-24, paragraph 4: should specifically reference changed hydrology (timing and peaks of flood flows) along with “more...intense storm events.”

App 4, page A-24, paragraph 5, line 1: “conveyance around the Delta” – should be changed to simply “new Delta conveyance” as it is yet to be determined where or what type of new conveyance will be the preferred project, if any.

App 4, page A-25: seem to be missing sentence at end of paragraph 2...?

Appendix 5: The following project should be included as an IP “early action”.

Primary Agencies: State and Federal Contractors Water Agency (SFCWA)

Project: Yolo Ranch Habitat Restoration Project

Description:

The 3,400-acre Yolo Ranch, also known as McCormack Ranch, has historically been used for cattle grazing as opposed to high-value crops. The Ranch, located in the lower Yolo Bypass just to the north of Liberty Island, presents an ideal location to expand tidal wetlands in the Sacramento-San Joaquin Delta. The initial 700 acre project contributes to expanding our scientific understanding of wetlands benefits as requested by the National Research Council of the National Academies in their recent scientific assessment of the Delta. The Yolo Ranch wetlands project is part of an adaptive management approach in the Delta to learn the relative benefits of different fish habitats, quantify the production and transport of food and understand how fish species that take advantage of the new habitat. SFCWA staff and its contractors are currently analyzing the habitat restoration alternatives utilizing new hydrodynamic models for the Yolo Bypass. SFCWA plans to complete the design, environmental documentation, permits, engineering plans and specifications, hydrodynamic modeling, biological field surveys, and monitoring and science plans for the Yolo Ranch Phase I Tidal marsh restoration project by next spring. The Yolo Ranch Project is a key near-term project that should assist in increasing abundance of Delta smelt, Chinook salmon, steelhead and overall health of the ecosystem food-web. The goal is to create self-sustaining wetlands that promote a healthy mixture of native plant and wildlife communities and improve efforts at restoring these natural systems.